

JUN 2 1980 RECD

BEFORE THE
COPYRIGHT ROYALTY TRIBUNAL
WASHINGTON, D.C.

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In the matter of

Compulsory License for Secondary)
Transmissions by Cable Systems;)
Royalty Adjustment Proceeding.)

CRT 80-3

JOINT REPLY COMMENTS
OF COPYRIGHT OWNERS

American Society of Composers, Authors and Publishers, Broadcast Music, Inc., Major League Baseball, Motion Picture Association of America, Inc., National Association of Broadcasters, National Basketball Association, National Hockey League, and North American Soccer League (hereinafter "Copyright Owners") submit these joint reply comments in response to the Copyright Royalty Tribunal's notice of January 1, 1980. 45 Fed. Reg. 63.

INTRODUCTION

The purpose of this proceeding "is to assure that the value of the royalty fees paid by cable systems is not eroded by changes in the value of the dollar or changes in average rates charged cable subscribers." H. Rep. No. 94-1476, 94th Cong. 2d Sess. p. 175. Only one other party, National Cable Television Association (hereinafter "NCTA"), filed initial comments in this proceeding

Of the seven exhibits submitted by NCTA, only the first two appear to have any relevance to the determinations to be made in this proceeding. The information contained in the remaining exhibits, so far as we can ascertain, sheds no light upon the issues before the Tribunal - whether, and if so to what extent, the value of the royalty fees paid by cable systems has been eroded by changes in the value of the dollar or changes in average rates charged cable subscribers, and what action by the Tribunal is required in light of these changes.

NCTA Exhibit 1 discusses the choice of an inflation index to measure the change in the real constant dollar level of the royalty payments made by cable systems. NCTA Exhibit 2 presents data on the changes in average subscriber rates for basic cable service. The information in these exhibits is indeed relevant to the question of how much the real constant dollar level of cable royalty payments has been eroded. However, NCTA has offered no suggestions as to how the Tribunal should fulfill its responsibilities in this proceeding.

Copyright Owners have serious questions with respect to the reliability of the data as well as the validity of the conclusions presented by NCTA. However, we believe that these questions can best be explored in the hearing room where the witnesses provided by NCTA can be examined

and the probity of their testimony weighed by the members of the Tribunal. Thus, Copyright Owners will await the hearing stage of this proceeding to examine in detail the evidence presented by NCTA.

Setting aside questions as to which party has presented the more probative evidence, it should be noted that the submissions of NCTA and Copyright Owners have significantly narrowed at least one of the major issues to be addressed by the Tribunal in this proceeding - namely, the extent to which the real constant dollar level of cable royalty payments has been eroded by the failure of basic cable subscriber rates to keep up with the rate of inflation.

The data relied upon by Copyright Owners show that basic cable charges increased 12.1% between December 31, 1976, and December 31, 1979. That increase compares with a 27.5% increase in the Consumer Price Index during the same period. Thus, we concluded on page 10 of our initial comments, "a 13.8% increase in cable royalty rates would be necessary to provide, as of January 1, 1980, the real constant dollar level of the royalty fee per subscriber which existed as of January 1, 1977."

The data presented in NCTA Exhibit 2, Table 2, indicate that average subscriber rates for basic cable ser-

vice increased 16% between "late" 1976 and April 1, 1980. The material in NCTA Exhibit 1 indicates that the Gross Domestic Business Product deflator (PCE), which NCTA argues is the appropriate measurement standard, increased 24.8% between October, 1976 and December, 1979. Thus, according to the NCTA data, basic subscriber charges lagged behind inflation by some 7.7%, which would be the percentage increase in the cable royalty rates necessary to reach the real constant dollar level of the royalty fee that existed in 1976.

These data roughly describe the outer limits of the Tribunal's determination with respect to the erosion of the value of the cable royalty fees between 1976 and 1980. The NCTA data show that cable royalty rates should be increased by some 7.7%. The data supplied by Copyright Owners show that cable royalty rates should be increased by some 13.8%. Although the difference between 7.7% and 13.8% is large, at least the Tribunal is now able to focus its attention upon these specific numbers which delineate the area in dispute between the two contending parties.

Of course, the foregoing relates only to one of the several issues before the Tribunal in this proceeding. In addition to establishing the percentage increase necessary to bring the cable royalty rates up to their 1976 real constant dollar level, the Tribunal must decide how to make

up for past deficiencies in the level of royalty payments and how to avoid deficiencies in the future. Moreover, the Tribunal's decision must reflect new cable marketing techniques such as "tiering" and free service offerings and, hopefully, create a self-adjusting mechanism to reduce the need for rate review proceedings of this type every five years. Copyright Owners addressed these issues in their initial comments and proposed that the Tribunal provide for cable royalty payments based upon the present value of basic subscriber charges as they existed in 1976.

Copyright Owners submit that their proposal follows the statutory intent and purpose precisely because cable systems would pay exactly the real constant dollar payment per subscriber that existed when the Copyright Act was enacted. We are confident that this proposal will be fully justified during the hearing stage of this proceeding

and urge that it be adopted by the Tribunal in its final decision.

Respectfully submitted,

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June 3, 1980

CERTIFICATE OF SERVICE

I, Ines Matos, hereby certify that I have mailed, first class, postage prepaid, on this 2nd day of June, 1980, copies of the foregoing to the following:

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